IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1293 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE K.M.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MACWAN KUSUMBEN POULBHAI

Versus

DISTRICT PRIMARY EDUCATION OFFICER

Appearance:

1. Special Civil Application No. 1293 of 1994

MR ANANT S DAVE for Petitioner No. 1

MR ND NANAVATI for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 18/06/2004

ORAL JUDGEMENT

1. Macwan Kusumben Poulbhai, petitioner, has filed this petition with a prayer that this Court may issue a

writ of mandamus and also a declaration that the petitioner is entitled to be appointed as temporary teacher as per her turn in the select list prepared pursuant to the advertisement dated 27.9.1989, at Annexure "A", by the District Primary Education officer, respondent No.1 herein. It is further contended that the respondents are bound to operate the said select list.

2. It is the case of the petitioner that, pursuant to the advertisement dated 27.9.1989 for recruitment of primary teachers, the petitioner had applied for the same. The respondents had taken an interview and a select list of more than 100 candidates was prepared and the petitioner's name appears at Sr. No.1054. It is the case of the petitioner that about 472 candidates were appointed as per the select list and the respondents have stopped giving any further appointment from the said select list (after Sr. No.472) is prepared. It is the case of the petitioner that the respondents are bound to operate the said select list and give appointment from the said select list to the extent of vacancies existing till filing of the petition in the cadre of Primary Teacher in the District of Kheda. The petitioner has contended that the action of the respondents of not giving appointment from the said select list after Sr. No.472 is absolutely illegal and arbitrary. The petitioner has, further, contended that, once she has been put on the select list, she is entitled to the appointment and, till the select list is exhausted, the respondents cannot appoint anybody else in this behalf.

3. On behalf of the respondents, learned Senior Advocate, Mr. N.D. Nanavati, assisted by learned advocate, Mr.H.C. Buch, has contended that merely because a candidate is selected and kept in the select list, he does not acquire any absolute right for appointment and, therefore, the entire basis of the claim of the petitioner is unsustainable in the eye of law. In support of the same, the learned counsel for the respondents has relied upon the judgment of the Apex Court in the case of K. Jayamohan vs. State of Kerala, reported in 1998 (1) SLJ p.19, wherein, it is held as under:

"It is settled legal position that merely because a candidate is selected and kept in the waiting list, he does not acquire any absolute right for appointment. It is open to the Government to make an appointment or not. Even if there is any vacancy, it is not incumbent upon the Government to fill up the same."

4. In view of the aforesaid, in my view, the

petitioner has no legal right and there is no substance in this petition. The petition is dismissed. Rule is discharged with no order as to costs.

(K.M. Mehta, J.)

(swamy)